



# MEMORANDUM

GOE

AGENDA ITEM NO. 2 (EE)

107.07-17A MIAMI-DADE/GSA-MAT. MGT.

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

DATE: November 14, 2003

FROM: George N. Burgess  
County Manager

SUBJECT: Execution of Amendment  
Number Two to Contract with  
City of Hialeah Gardens for  
Provision of Water Service

## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve and adopt the attached resolution authorizing the execution of Amendment Number Two to the contract between Miami-Dade County (County) and the City of Hialeah Gardens (City) providing for the rendition of water service by the County to the City.

## BACKGROUND

On February 20, 1996, the County and the City entered into a contract for the provision of water service by the County to the City. Amendment Number One, dated April 20, 2001, extended the agreement until January 31, 2004. The City desires the County to continue to provide water service.

Amendment Number Two modifies the Contract so it is consistent with other current water service contracts and will extend the Contract until January 31, 2009, to coincide with the Consumptive Use Permit issued by the South Florida Water Management District. The Amendment has been approved by the City.

Therefore, it is respectfully requested that the Board approve the attached resolution approving Amendment Number Two to provide water service to the City of Hialeah Gardens.

  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

**DATE:** December 4, 2003

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING EXECUTION OF AMENDMENT  
NUMBER TWO TO CONTRACT BETWEEN THE COUNTY AND  
THE CITY OF HIALEAH GARDENS FOR THE PROVISION OF  
WATER SERVICE BY THE COUNTY TO THE CITY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of Amendment Number Two with the City of Hialeah Gardens for the provision of water service by the County to the City in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County, Florida and to exercise provisions contained therein.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson  
Katy Sorenson, Vice-Chairperson

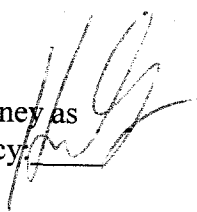
Bruno A. Barreiro  
Betty T. Ferguson  
Joe A. Martinez  
Dennis C. Moss  
Natacha Seijas  
Sen. Javier D. Souto

Jose "Pepe" Diaz  
Sally A. Heyman  
Jimmy L. Morales  
Dorrin D. Rolle  
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of December, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency: 

By: \_\_\_\_\_  
Deputy Clerk

AMENDMENT NUMBER TWO  
TO CONTRACT BETWEEN  
MIAMI-DADE COUNTY AND  
CITY OF HIALEAH GARDENS, FLORIDA  
PROVIDING FOR THE RENDITION OF WATER SERVICE

THIS AMENDMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and the City of Hialeah Gardens, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "CITY";

W I T N E S S E T H:

WHEREAS, on February 20, 1996, the County and the CITY entered into a contract providing for rendition of water service by the COUNTY to the CITY, and

WHEREAS, on April 20, 2001, the County and the CITY entered into Amendment Number One to the agreement, and

WHEREAS, the COUNTY and the CITY desire to make certain modifications to said contract, and

WHEREAS, the Miami-Dade Water and Sewer Department, hereinafter referred to as the "Department", operates and maintains the COUNTY's water system,

NOW, THEREFORE, in consideration of the covenants and obligations set forth herein, the COUNTY and the CITY hereby agree as follows:

1. The CITY shall provide a copy of the CITY's cross connection/backflow prevention ordinance to the Department within one year of the execution of this Amendment pursuant to Paragraph 3 of the Contract.

2. Paragraph 16 of the Contract is hereby modified to delete the following sentence:

In addition, the CITY shall submit a report to the Department summarizing the amount of water sold to its customers or used by the CITY. The report shall be submitted within thirty days following December 31, March 31, June 30 and September 30 of each year.

3. Paragraph 19 of the Contract is hereby modified to read as follows:

It shall be the obligation and duty of the CITY to transmit the water at its own expense from each point of delivery to the place or places of ultimate use and, in so doing, to supply and impart to the water such adequate pressure and flow as may be necessary to provide adequate pressure at all points beyond such points of delivery. Accordingly, the COUNTY shall not be responsible for insufficient pressure, for either domestic or fire flow service, nor be required to correct any fluctuation in pressure occurring beyond any point of delivery. The County shall provide at least 24-hour notice before any planned decrease in pressure which would affect the City's ability to deliver services to any City customer, if implemented by the County.

4. Paragraph 23 of the Contract is hereby modified to read as follows:

Billings for services for provided in accordance with this contract shall be rendered monthly. Invoices will be mailed by the tenth day of the month following the month for which service has been provided, based on meter readings taken by Department employees on or about the 28<sup>th</sup> day of each month. Amounts billed on such invoices are due when rendered. In the event CITY disputes a bill, CITY shall provide the COUNTY with notice of the reasons for non-payment and shall escrow such portion of the bill that is disputed in an interest-bearing account. The parties shall promptly meet and use good faith efforts to resolve the dispute within 45 days of the notice. Payments not received by the Department on or before twenty-five (25) days after the postmark date of the bill shall be considered past due. All past due invoices shall be

subject to a late charge as established by the COUNTY, such charge to reimburse the Department for costs in processing and otherwise administering late payments. In addition, per annum interest shall accrue on the past due charges including the late charges at the maximum legal rate provided by Florida law for contracts in which no interest rate is specified, for each day, including Saturdays, Sundays, and holidays, from the past due date until the date of receipt by the Department. For purposes of this paragraph, date of receipt shall be the date of actual receipt by the Department if hand delivered or mailed, or date of transfer to the Department's bank, if electronic funds transfer is used.

5. Paragraph 24 of the Contract is hereby modified to delete the following sentence:

The attorney's fees shall be equal to those reasonable fees customarily paid to COUNTY'S attorneys in the form of salary and related salary And indirect costs with this total compensation not to exceed fees customarily charged by privately retained counsel in Dade County for similar services.

6. Paragraph 29 of the Contract is hereby modified to read as follows:

Any cessation of water services and any consequences therefrom caused by force majeure, inevitable accident or occurrence or cause beyond the reasonable control of the COUNTY, shall not constitute a breach of this contract on the part of the COUNTY and the COUNTY shall not be liable to the CITY or its inhabitants or customers for any damage resulting from such cessation or interruption of water service. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as hurricanes, floods, washouts, storms, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences e shall mean those which are unpreventable by the COUNTY and

shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of terrorism, insurrections, riots, federal, state, county and local governmental restrictions, regulations and restraints, military action, civil disturbances, and conditions in federal, state, county and local permits.

Neither party shall be liable for its failure to carry out its obligations under the contract during a period when such party is rendered unable, in whole or in part, by force majeure or inevitable accidents or occurrences to carry out such obligations, but the obligations of the party or parties relying on such force majeure shall be suspended only during the continuance of any inability so caused and for no longer period of an unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party to excuse its failure to perform by reason of force majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a force majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by force majeure unless the failure to give timely notice causes material prejudice to the other party.

7. Paragraph 35 of the Contract is hereby modified to read as follows:

This Contract shall be and remain in full force and effect for a period of ten (10) years from the date of execution of this Amendment providing the South Florida Water Management District (District) extends the applicable current and subsequent Consumptive Use Permits (Permits). The CITY acknowledges, understands and accepts that renewals of the Permits may have differing terms and conditions as may be determined by the District. To the extent



these Permits have different terms or conditions, the CITY shall comply with the conditions of the applicable Permits issued by the District and any revisions or modifications to such permits.

8. The COUNTY's mailing address in Paragraph 37 of the Contract is hereby modified to read as follows:

Miami-Dade County  
c/o The Director  
Miami-Dade Water and Sewer Department  
3071 S.W. 38<sup>th</sup> Avenue, Room 502  
Miami, Florida 33146

9. Paragraph 41 of the Contract is hereby added to read as follows:

In the event of complete or partial failure of any meters to register the CITY's water consumption, the COUNTY may determine the estimated water consumption based on the most recent twelve (12) full months of consumption measured by the meters when they were operating properly or another method mutually agreed upon by the Department and the CITY. To the extent possible, the COUNTY shall repair all failed meters within thirty (30) days of the determination that the meter has completely or partially failed.

10. All terms and conditions of the Contract not specifically modified by this Amendment shall remain in full force and effect.

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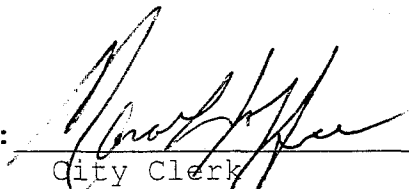
In WITNESS WHEREOF, the parties hereto have executed  
these presents on the day and date first written above.

MIAMI-DADE COUNTY  
ATTEST:

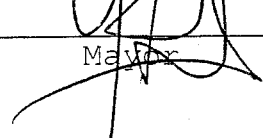
BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_ (SEAL)  
County Manager

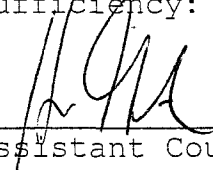
ATTEST:

BY:  \_\_\_\_\_  
City Clerk

THE CITY OF HIALEAH  
GARDENS, FLORIDA

BY:  \_\_\_\_\_ (SEAL)  
Mayor

Approved as to form and legal  
sufficiency:

 \_\_\_\_\_  
Assistant County Attorney

Approved as to form and legal  
sufficiency:

 \_\_\_\_\_  
City Attorney for the City of  
Hialeah Gardens, Florida